



M E M O R A N D U M

TO: File

FROM: Brenita Selement, Procurement Specialist II

DATE: September 19, 2019

SUBJECT: MA 5500 NG190000048

The Master Agreement was created, administered, and maintained by the Economic Development Department. All original documents are located with the Economic Development Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes.

**SPACE- RELATED NEEDS CONTRACT FOR THE CREATIVE SPACE
ASSISTANCE PROGRAM
BETWEEN THE
CITY OF AUSTIN
AND
SALVAGE VANGUARD THEATER**

This Space-Related Needs contract under the Creative Space Assistance Program ("Contract") is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas, and Salvage Vanguard Theater ("Contractor"), located at 3506 Rogge Ln. in Austin, Texas.

Article 1. Term and Key Personnel

1.1. Term of the Contract

This Contract shall become effective on the date of the City signing and shall remain in effect for twelve months after that date, or until both parties have completed their obligations, whichever is later.

1.2. Designation of Key Personnel

The Contractor's Contract Manager for this engagement shall be Kate Taylor, 512-474-7886, info@salvagevanguard.org. The City's Contract Manager for the engagement shall be Kim McCarson, 512-974-7963, Kimberly.mccarson@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. If it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described above. Additionally, the Contractor will promptly notify the Project Manager to obtain prior approval for the replacement.

Article 2. Contractor's Obligations

- 2.1. Facility Improvements Work Plan:** The Contractor shall perform the facility improvements and services set forth in the Work Plan, incorporated into this contract as Exhibit E. The work shall be performed in accordance with the timeline set forth in the Work Plan (Exhibit E).
- 2.2. Career Development:** The Contractor is obligated to engage in Career Development opportunities with the Austin Independent School District, other school districts operating in Austin, or other entities that provide information about career options for students K-12.
- 2.3. Co-Location Obligations:** The Contractor is encouraged to provide co-location opportunities for other creatives or creative-based organizations.
- 2.4. Reporting Obligations:** The Contractor is obligated to provide a written report, before submitting the final invoice. This report shall describe:
 - 2.4.1.** how the CSAP funding improved the Contractor's overall financial stability during the term of the contract and how it is expected to improve the

Contractor's financial stability for the next two years, including summarized information describing revenue flow during the term of the contract relative to revenue flow the prior year;

- 2.4.2. Any new revenue-generating activities that occurred during the term of the contract because of the CSAP funding as well as new revenue-generating activities that are expected to occur over the next two years because of the CSAP funding;
- 2.4.3. Any unexpected costs that occurred during the term of the contract, and summarized information describing what the Contractor did to mitigate negative impacts from those costs;
- 2.4.4. Any co-locating activities that occurred during the term of the contract, including who co-located, how long was that co-location, and how did that co-location affect the Contractor's revenue;
- 2.4.5. Number of jobs retained by the Contractor, including whether they are full-time or part-time jobs, and whether the employees are contractors or employed directly by the Contractor;
- 2.4.6. Technical Assistance activities in which the Contractor participated during the term of the contract that fit the criteria of Technical Assistance described in the Program Guidelines (Exhibit A);
- 2.4.7. Professional Development activities that occurred during the term of the contract that fit the criteria of Professional Development described in the Program Guidelines (Exhibit A);
- 2.4.8. Career Development activities with students in K-12 that occurred during the term of the contract that fit the criteria of Career Development described in the Program Guidelines (Exhibit A);
- 2.4.9. Any specific activities related to working with historically underrepresented communities, whether as artists, performers, audiences, or recipients of services; and
- 2.4.10. The summary results of audience surveys that were taken during the term of the contract.

2.5. Insurance Obligations: The Contractor is obligated to comply with the requirements in Exhibit B, Insurance Requirements. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- 2.5.1. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to requesting any payment under this contract, and within fourteen (14) calendar days after any written request from the City.
- 2.5.2. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

- 2.5.3. The Contractor shall not commence work until the required insurance is obtained and has been reviewed and approved by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor nor shall it be construed to be a limitation of liability on the part of the Contractor.
- 2.5.4. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+ VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 2.5.5. All endorsements naming the City as an additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Contract number and the Contractor's email address, and shall be mailed to the following address:
- Attn. Kim McCarson, City of Austin
Economic Development Department
P. O. Box 1088
Austin, Texas 78767
- 2.5.6. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage, as applicable.
- 2.5.7. The Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 2.5.8. The City shall be entitled, upon request and at an agreed upon location, without expense, to review certified copies of policies and endorsements and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulations binding upon either of the parties or the underwriter on any such policies.
- 2.5.9. The City reserves the right to review these insurance requirements during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City, based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company, as well as the Contractor.
- 2.5.10. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 2.5.11. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

- 2.5.12. The Contractor shall provide the City 30 calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

Article 3. City Obligations

- 3.1. **Contract Amount:** In consideration for Contractor's performance under the terms of this Contract, the Contractor shall be paid an amount not to exceed \$48750 over the term of the Contract.

3.2. **Payments Schedule:**

- 3.2.1. The Contractor shall invoice the City no more frequently than monthly for work performed and paid for in accordance with the Work Plan. Each invoice shall be accompanied by any required City permit, and evidence that the Contractor has paid for the work.

- 3.2.2. The City shall retain 15% of each payment requested. This retainage shall be paid at the end of the contract term, upon the City's receipt and acceptance of the Contractor's final report.

- 3.3. To request payment under this contract, the Contractor shall provide an invoice. Each invoice must contain:

- 3.3.1. a non-duplicated invoice number,

- 3.3.2. the Contractor's Vendor ID number,

- 3.3.3. the Contractor's exact name and address as it is registered in the City's Vendor Connection portal,

- 3.3.4. the contract number, and

- 3.3.5. the name of the City's Contract Manager.

Invoices received without all of the required information shall be rejected by the City and returned to the Contractor.

3.4. **Payment Terms**

- 3.4.1. All proper invoices received by the City will be paid within 30 calendar days of the City's receipt of the invoice.

- 3.4.2. The City may withhold or set off the entire payment or part of any payment otherwise due to the Contractor to such extent as may be necessary on account of:

- 3.4.2.1. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

- 3.4.2.2. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.4.2.3. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - 3.4.2.4. failure of the Contractor to comply with any material provision of the Contract.
 - 3.4.3. The Contractor acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to the City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.
 - 3.4.4. The Contractor acknowledges that the City has provided notice that the City's payment obligations to the Contractor are payable only from funds appropriated or available for the purpose of this Contract. If the City does not appropriate funds for this Contract, or if there are no other lawfully available funds for this Contract, the Contract is void. The City shall provide the Contractor notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract.
- 3.5. **Final Payment and Close-Out.** The making and acceptance of final payment will constitute:
 - 3.5.1. a waiver of all claims by the City against the Contractor, except claims (A) which have been previously asserted in writing and not yet settled, (B) arising from failure of the Contractor to comply with the Contract, or (C) arising under the City's right to audit; and
 - 3.5.2. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

Article 4. General Terms and Conditions

- 4.1. **Amendment in Writing:** This Contract may be modified only in writing and properly executed by each of the parties. Neither any representation or promise made after the execution of this Contract, nor any modification or amendment of this Contract, shall be binding on the parties unless made in writing and properly executed by each of the parties.
- 4.2. **Dispute Resolution**
 - 4.2.1. If a dispute arises out of or relates to the Contract, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14

calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt, in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after the meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

4.2.2. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

- 4-3. **Right to Assurance:** When one party, in good faith, has reason to question the other party's intent to perform its obligations under this Contract, that party may make demand on the other party for written assurance of the intent to perform. The party who is asked for assurance has 10 business days to provide written assurance of intent to perform. If the party fails to provide the assurance, the demanding party may treat this failure as an anticipatory repudiation of the Contract and terminate the Contract for cause.
- 4-4. **Termination for Cause:** In the event of default by the Contractor, the City shall have the right to terminate this Contract for cause, by written notice delivered by certified mail. The Contractor is in default if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, or (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States. Unless the City specifies a different time in the notice, the Contract is terminated 30 calendar days after the date of the notice. During this time period, the Contractor may cure the default or provide evidence sufficient to prove to the City's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the City. The City's rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4-5. **Termination for Convenience:** The City may terminate this Contract, in whole or in part, for convenience, with 30 calendar days' written notice to the Contractor. If the City terminates this Contract for convenience, the Contractor shall immediately stop performance under this Contract (unless the Notice directs otherwise). The City will pay the Contractor for all goods delivered and services performed prior to the date of Notice.

4.6. Fraud: Fraudulent statements by the Contractor on any application or written communication to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

4.7. Force Majeure

4.7.1. Each Party agrees to excuse the failure of the other Party to perform its obligations under this Contract to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Contract, but only if and to the extent the event or circumstance is not within the control of the Party seeking to have its performance obligation excused and which the Party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a Party's cost but not its ability to perform.

4.7.2. The Party invoking Force Majeure shall give timely and adequate Notice to the other Party, by e-mail or orally but confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. In the event a Party's performance of an obligation under this Contract is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not last more than 90 days. If an event of Force Majeure affecting the Contractor's performance continues for more than 90 days, the City shall have the right to terminate this Contract upon Notice to the Contractor. The Contract shall terminate immediately upon receipt of such Notice.

4.8. Notices

4.8.1. Unless explicitly stated elsewhere in this Contract, all notices must be given in the manner set out in this Section in order to be effective.

4.8.2. Any notice required or allowed to be given or to be served in connection with this Contract will be deemed delivered and received on the earlier of the date actually received or a date that is:

4.8.2.1. Three calendar days after being deposited in the United States mail, if sent via certified mail, properly addressed and with postage prepaid; or

4.8.2.2. The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service.

4.8.3. Notice to each Party must be given as follows:

The City:

Kim McCarson

Economic & Business Liaison

Economic Development Dept.

City of Austin

PO Box 1088

The Contractor:

Kate Taylor

Executive Artistic Director

Salvage Vanguard Theater

PO Box 4675

Austin TX 78765

Austin TX 78767

with copies to:

City of Austin Law Dept.
ATTN: City Attorney
PO Box 1088
Austin TX 78767

4.8.4. The Parties will each have the right to change their respective addresses for Notice purposes, and will have the right to specify as its address any other address within the United States of America by giving the other Party at least five days' Notice.

4.9. **Equal Opportunity:** For the duration of this Contract, the Contractor and its agents and subcontractors shall:

4.9.1. Take no action to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability, including but not limited to actions taken to employ, promote, demote, transfer, recruit, or pay or otherwise compensate, or select for training.

4.9.2. Take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

4.10. **Warranties:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable federal, state and local laws, rules or regulations.

4.11. **Right to Audit**

4.11.1. The Contractor agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all of the Contractor's records related to this Contract. The Contractor shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

4.11.2. The Contractor shall include the requirements of Subsection (a), above, in all subcontractor agreements entered into in connection with this Contract.

4.12. **Stop Work Notice:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of federal, state, or local laws, rules or regulations, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been

corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

4.13. Indemnification

4.13.1. THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES") AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY OUT OF (A) A BREACH OF THIS CONTRACT OR VIOLATION OF LAW BY THE CONTRACTOR AND THE CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS (THE "CONTRACTOR PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CONTRACTOR PARTIES IN THIS CONTRACT, IN THE CONTRACTOR'S APPLICATION, OR THE FORMATION OF THIS CONTRACT, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CONTRACTOR PARTIES IN CONNECTION WITH THIS CONTRACT. CLAIMS TO BE INDEMNIFIED INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, PROPERTY DAMAGE, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES, WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. THE CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED, IN PART, BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.

4.13.2. The City shall give the Contractor notice of any claim asserted against an Indemnified Party. The Contractor shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving the Contractor of any obligations in this Contract. In no event shall the Contractor admit liability on the part of an Indemnified Party without the prior, written consent of the City Attorney.

4.13.3. Maintenance of the insurance required under this Contract shall not limit the Contractor's obligations under this Section. The Contractor shall require all subcontractors to indemnify the City in the same manner as provided in this Article.

4.14. **Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform, the Contractor shall give written notice to the City within 10 calendar days after receipt of the claim by the Contractor. The notice to the City shall state the date of notification of the claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis for the claim; and the name of each person against whom the claim is being asserted. The notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

4.15. **No Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or

understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 4.16. Gratuities:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 4.17. Prohibition Against Personal Interest in Contracts:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation or application shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation or application. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty of the impropriety shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City, at no cost to the City.
- 4.18. Prevailing Wage:** If this Contract involves construction of new space or renovation of existing space, the Contractor shall ensure that its subcontractors are paid (and are paying employees) the prevailing wage, which is the per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the work is performed.
- 4.19. Independent Contractor:** This Contract shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. The City and the Contractor are independent contractors. The Contractor agrees and understands that this Contract does not grant any rights or privileges established for employees of the City.
- 4.20. Assignment Delegation:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation, without prior written consent from the City, by the Contractor shall be void. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party to this Contract.
- 4.21. Survival of Obligations:** All provisions of this Contract that impose continuing obligations on the Parties, including but not limited to warranty, indemnification, limitation of liability, and keeping addresses for Notice current, shall survive the expiration or termination of this Contract.

4.22. Election of Remedies; No Waiver: Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Contract shall constitute an election or waiver of remedies or limit a Party in any manner in the enforcement of any other remedies that may be available to the Party, whether at law or in equity.

4.23. Jurisdiction and Venue: This Contract is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Contract, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County Texas.

4.24. Severability: If a court of competent jurisdiction determines that a term or provision of this Contract is void or unenforceable, the remainder of this Contract remains effective to the extent permitted by law.

4.25. Non-Suspension or Debarment Certification: The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City contracts. By accepting this Contract, the Contractor certifies that it and its principals are not currently suspended or debarred from doing business with the federal government, as indicated by the General Services Administration List of Excluded Parties, the State of Texas, or the City of Austin.

4.26. Mandatory Anti-Israel Boycott

4.26.1. Required Anti-Boycott Israel Provision. Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

4.26.2. Pursuant to §2270.002, Texas Government Code, the City is prohibited from entering a contract with a value of \$100,000 or more with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

4.26.2.1. "Boycotting Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

4.26.2.2. A "company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit and have 10 or more full-time employees. Sole proprietorships are excluded from this definition.

4.26.3. Pursuant to this statutory requirement, the Company provides this written verification that, if the Company is a company as defined above, it does not boycott Israel and will not boycott Israel for the term of this Agreement.

4.26.4. The Company's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Agreement.

4.27. **Execution in Counterparts:** This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same Contract.

4.28. **Mutual Drafting:** This Contract shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against the drafter shall not be applicable to this Contract.

4.29. **Complete Agreement:** This Contract constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, and representations concerning its subject matter. This Contract includes the following exhibits, which are incorporated into this Contract by reference:

Exhibit A.	CSAP Program Guidelines
Exhibit B.	Insurance Requirements
Exhibit C.	Non-Discrimination and Non-Retaliation Certification
Exhibit D.	Non-Suspension or Debarment Certification
Exhibit E.	Work Plan

CITY OF AUSTIN

CONTRACTOR

BY: 

BY: Kate Taylor

NAME: Simon M. Taylor

NAME: Kate Taylor

TITLE: Interim Deputy Director

TITLE: Executive Artistic Director

DATE: 9.10.16

DATE: 9/18/19

APPROVED AS TO FORM:

Ron Pigott
ASSISTANT CITY ATTORNEY

EXHIBIT A
CREATIVE SPACE ASSISTANCE PROGRAM (CSAP) GUIDELINES

CREATIVE SPACE ASSISTANCE PROGRAM (CSAP) GUIDELINES, FY19

INTRODUCTION

The Economic Development Department's (EDD) June 2016 Response to the Music and Creative Ecosystem Omnibus Resolution (Resolution No. 20160303-019) identified affordable space for artists and musicians as a priority concern area. Preserving and increasing the supply of available and affordable space for the creative community involves the public and private sector working collaboratively to assess existing space needs, anticipate future demand, and find ways to efficiently bring forward that supply of space. The public sector plays a role in facilitating a variety of interventions to provide relief to those in need; this Program is one of those interventions.

2019 CSAP OVERVIEW

The purpose of this Program is to provide direct support to qualifying creative organizations facing temporary or permanent displacement, or to those previously displaced. To build on the success of the 2018 Pilot—the Arts Space Assistance Program (ASAP), which exclusively benefited arts nonprofits—2019's Creative Space Assistance Program (CSAP) will provide grants to qualifying for-profit live music venues, performance spaces, and art galleries, in addition to arts-focused nonprofits.

Nonprofits composed of and/or serving historically underrepresented communities, such as ALAANA (African American, Latino, Asian American, Arab American, and Native American) communities, individuals with disabilities, and LGBTQIA are encouraged to apply.

This Program is able to distribute up to \$750,000 in funding for FY19. Based on recent real estate trends and the amount of funding requested by applicants in the pilot year, EDD anticipates overwhelming demand. Grants will be awarded in amounts up to \$50,000, with the option of pro-rating awards. Organizations with at least a 3-year lease term may apply for financial assistance; applicants with less than a 3-year lease may also apply, but must submit a 3-year business plan and narrative illustrating how CSAP will benefit.

Financial assistance may be used to defray rent hikes, property acquisition costs, or other compelling space-related needs identified by applicants. Only one financial assistance grant may be awarded per project/organization per grant period, which will extend one year from contract execution. Only organizations that have been displaced and relocated (or facing threat of such) after June 1, 2016 are eligible for financial assistance.

Grants will be made on a competitive basis and determined by established criteria. Priority will be given to organizations confronting immediate and critical needs, and bonus points will be given to those who did not receive 2018 ASAP funding. After applications are initially reviewed by City Staff to meet Program eligibility, a five-

member Grant Review Committee comprised of representatives from the arts, music, finance, and/or real estate communities will evaluate and score the applications and make final recommendations to EDD.

CSAP Contract Commitments: Grant recipients must comply with the following commitments.

- **Technical Assistance** – Agree to participate in technical assistance or other capacity building support provided by the City of Austin (for example, workshops related to business development, financial planning, etc.); AND
- **Job Retention** – Agree to commit to maintain current employment levels; AND
- **Professional Development** – Agree to participate in or host one professional development opportunity for the community (speaker, workshop, webinar, panel, etc.), in partnership with EDD; OR
- **Career Development** – Agree to engage in career development opportunities with the Austin Independent School District, other school districts operating in Austin, or other entities that provide information about career options for students K-12.

CSAP Eligibility Requirements: An applicant must meet the following minimum eligibility criteria:

- **Nonprofit Applicants:** The applicant must be designated as a 501(c)(3) per the Internal Revenue Code or State of Texas arts nonprofit organization in good standing.
- **For-Profit Applicants:** The applicant must meet EDD's definition of either a "Live Music Venue", "Performance Venue / Theater", or "Museum / Art Gallery":
 - **Live Music Venue:** An establishment where live music programming is the principal function of the business and/or the business is a live music destination, and where the venue clearly establishes the ability of an artist to receive payment for work by percentage of sales, guarantee or other mutually beneficial formal agreement for every performance. A live music venue is a destination for live music consumers, and/or its music programming and is the primary driver of its business as indicated by the presence of at least five (5) of the following:
 - a) Defined performance and audience space;
 - b) Mixing desk, PA system, and lighting rig;
 - c) Back line;
 - d) At least two of the following: (i) sound engineer, (ii) booker, (iii) promoter, (iv) stage manager, or (v) security personnel;

e) Charges cover charge to some music performance through ticketing or front door entrance fee;

f) Markets specific acts through show listings in printed and electronic publications;

g) Hours of operation coincide with performance times; or

h) Programs live music at least five nights a week.

- **Performance Venue / Theater:** An establishment whose principal function and mission is to present live performances, plays, live music, film screenings, or other performances of artistic work produced by an artist, or arts and culture organization, accessible by public audiences.
- **Museum / Art Gallery:** Facility whose principal function and mission is to exhibit, present, and/or sell artistic work in a variety of media produced by an artist, artist collective, or arts and culture organization, accessible by public audiences. (For the purposes of this program's eligibility, this will not include City-run/owned, State-run/owned, or Federally-run/owned facilities.)

The receipt of grant funds by for-profit businesses may result in a significant tax liability in the year of benefit. It is the responsibility of the recipient to consult with his/her tax advisor to understand how he/she may be impacted based on his/her individual tax situation.

- The applicant can demonstrate an urgent need for assistance due to having been adversely impacted by the real estate market after June 1, 2016 as follows:
 - It has been displaced and relocated, forced to close, OR
 - It faces the imminent threat of displacement and relocation, OR
 - It has renewed a lease at substantially higher rates ("substantially higher rate" is defined as at least 25% higher than current lease amount) , OR
 - It faces a pending lease renewal at substantially higher rates
- The applicant can provide evidence of site control, which includes one of the following:
 - An existing, fully executed lease or lease offer at a significantly higher rate than the previous or current rate, OR
 - An existing, fully executed lease or lease/purchase offer for a facility in need of City Code-related improvements
 - An existing, fully executed lease or lease/purchase offer for a facility in need of revenue-generating improvements

- The applicant can demonstrate the leased property or property to be acquired is located in the City of Austin incorporated city limits or extraterritorial jurisdiction.
- The applicant must show the appropriate zoning assigned to the leased property or property to be acquired.

Eligible Request Categories (maximum award of up to \$50,000 in each category; applicants must select one category in their application):

- **Rent Stipend:** If an applicant is requesting funds in the form of rent stipend, the applicant must have signed a new lease or renewed their lease after June 1, 2016 at a significantly higher rate. Applicants may apply for up to twelve (12) months of a rent stipend to pay the difference between the prior rent and the current rent. The applicant must provide a three-year financial plan indicating how the stipend will enable them to pay this higher rent into the future. The financial plan should demonstrate a plan for achieving or increasing operating feasibility or stability over the three-year period.
- **Gap Financing for Property Acquisition:** If an applicant is requesting funds in the form of down payment assistance or gap financing, the applicant must demonstrate a high degree of project readiness, including detailed deal structure (including proof of financing that will make up the remaining amount of funds needed for the purchase), acquisition process/timeline, detailed cost estimates for the acquisition or renovation (if applicable), and property/facility specifications. A one-page summary of the organization's business plan is also required.
- **Other Space-Related Needs, such as facility improvements or displacement-related expenditures:**
 - If an applicant is requesting funds to make physical and/or acoustical improvements to the facility being leased or purchased, the applicant must demonstrate a high degree of project readiness, including secured funding source(s), a detailed site development/construction budget, an identified project team/contractors, timeline, and a proposed operating/maintenance budget for the facility. The applicant must demonstrate how the proposed project will comply with the City Code and how the proposed project improves the financial and programmatic performance for the organization. Grant funding awarded will be reimbursed upon proof of a secured permit to remedy City Code violations or to execute facility improvements. A one-page summary of the organization's business plan is required for space-related needs.
 - A grant of up to \$5,000 may be awarded for the creation of a Predevelopment Plan by a licensed architect or engineer. In order to request funds to implement the plan, the applicant may submit another grant application in a subsequent and eligible funding cycle.

- If an applicant is requesting financial relief to offset or defray displacement-related expenditures (production-specific facility rental, equipment rental/acquisition, transportation or moving costs, etc.), the applicant must be able to produce receipts/proof of payment for these specific expenditures. The receipts/proof of payments cannot be dated prior to June 1, 2016.

Application Information: For all requests, applicants must demonstrate all of the following:

- **Narrative Description (Nonprofit Applicants):** Provide narrative information that describes organizational history/context, including how the organizational mission and programs benefit the community, who participates in artistic production/performance, and who is served (audiences and/or public participants).

Narrative Description (For-Profit Applicants): Provide narrative information explaining community and economic benefits such as increased payroll for musicians and music industry workers, increased load cards, new revenue streams, energy efficiency, job retention, job expansion, safety / City Code compliance, sound complaint reduction, preservation of locally owned music venues and theaters, increasing performance opportunities for local musicians and artists, and fostering genre diversity.

- If the applicant intends to offer co-location opportunities (access to the space by individual creatives or creative-based organizations), the applicant must demonstrate the extent to which this co-location serves or advances organizational mission or cultural use, increases access to long-term affordable space for other creatives, and/or improves programmatic efficiencies/collaboration.
- **Financials (Nonprofits):** Financial responsibility by submitting the organization's IRS Form 990 for the most recent three years (if unavailable, balance sheet and income statement), budget for the current year, and year-to-date income statement and balance sheet.

Financials (For-Profit): Most recent three years of the for-profit's tax returns (if unavailable, balance sheet and income statement) and current profit & loss report demonstrating Cultural Use business model

- A commitment to equity through mission focus, event schedule, board or staff representation, outreach marketing, and/or working with, presenting to and/or offering programs to members of historically underrepresented communities in the City of Austin. (The Cultural Arts Division currently applies the following definition of "cultural equity": *Cultural equity embodies the values, policies, and practices that ensure that all people—including but not limited to those who have been historically underrepresented based on race/ethnicity, age, disability, sexual orientation, gender, gender identity, socioeconomic status, geography,*

citizenship status, or religion—are represented in the development of arts policy; the support of artists; the nurturing of accessible, thriving venues for expression; and the fair distribution of programmatic, financial, and informational resources. For further information provided by the City of Austin's Equity Office, please visit: <http://www.austintexas.gov/department/equity>).

- Evidence of the quality of its event schedule or artistic programming/services and advancement of the organization over time.

Evaluation Criteria and Scoring: Applications will be evaluated by a Grant Review Committee and scored as follows:

- **COMPELLING PROJECT NEED:** The applicant demonstrates the extent to which the funding will address a compelling organizational need - 20 POINTS
- **URGENCY:** The applicant demonstrates the level of urgency of need:
 - **Most Urgent:** The applicant has already been displaced or needs to immediately relocate, renew a lease, or renovate to avoid displacement that is expected to take place within 6 months of application submission – 15 POINTS
 - **Urgent:** The applicant has not been displaced yet, but needs to relocate soon, renew a lease, or renovate to avoid displacement that is expected to take place within 7-13 months of application submission – 10 POINTS
 - **Important but Less Urgent:** The applicant has not been displaced yet, but needs to relocate soon, renew a lease, or renovate to avoid displacement that is expected to take place within 14-20 months of application submission – 5 POINTS
- **CO-LOCATION:** The applicant demonstrates the extent of co-location opportunities for other creatives or creative-based organizations that this funding would support and how any co-locating/sub-leasing opportunities it intends to offer will help it meet or advance its own mission or improve programmatic collaboration. The applicant should include number and types of creatives or creative-based organizations served and in what capacity, and the qualitative and quantitative measurement for this co-location or shared space to increase capacity, efficiency, or effectiveness of both: (1) the "host" organization and (2) "hosted" creatives or "hosted" creative-based organizations, as the case may be – 20 POINTS
- **ORGANIZATIONAL STABILITY/PROJECT READINESS:** The applicant demonstrates that it is facing significant financial constraints, but has evidence of planning to identify and mitigate financial risk or has pursued or secured other sources of public support, philanthropic, investment, and/or earned revenue, and the extent to which CSAP funding would contribute to increased financial stability for the organization over the grant period. If requesting funds for relocation or

renovation, the organization demonstrates a high degree of financial and project readiness, and ability to complete such relocation or renovation in a timely and fiscally responsible manner – 20 POINTS

- **EQUITY:** The applicant demonstrates that it is committed to equity and to serving historically underrepresented communities in the City of Austin – 15 POINTS
- **EVENT HISTORY AND/OR ARTISTIC PROGRAMMING/ADVANCEMENT:** The applicant demonstrates the quality of its event history and/or artistic programming/services, and advancement of the organization over time – 10 POINTS
- **NEW RECIPIENT:** The applicant has not received any previous CSAP funding – 10 POINT BONUS

The City of Austin and the Grant Review Committee reserves the right to conduct finalist interviews or request additional information before funding recommendations are made. Failure to provide the additional information within the requested timeframe may result in a denial of the application.

Grant Fund Policies: Any grant funding awarded will be disbursed through a performance-based agreement between the City and the grant recipient.

The City of Austin reserves the right to grant requests in part or in whole. Grant funds may not duplicate contracted work for which City of Austin funding is already being received. Grant Commitment(s) must be met and the grant must be closed and expended by the agreed terms prior to approval of a subsequent and similar grant for additional funds. Grantees may apply for an extension if conditions cannot be met within the agreed term.

Grant funds will be disbursed on a reimbursement basis. Grantees must provide receipts/paid invoices to request grant fund disbursements. Grantees receiving rental subsidies should request disbursement on a monthly basis. Grantees receiving funds for other purposes may request reimbursements based on a schedule submitted as part of the contract and agreed upon by the City of Austin.

Other grant terms and conditions will be determined on a case-by-case basis by the Grant Review Committee or City staff.

In the event of non-compliance, penalties include, but are not limited to, the following:

- Termination of the grant
- Repayment of funds received by the grantee
- Possible debarment from City of Austin funding programs

Timeline (subject to change):

Application Opens	March 4, 2019
Information Meeting	March 19, 2019, City Hall Boards and Commissions Room 1101 2:00-3:30pm
Eligibility requirements due	March 29, 2019
Application Deadline	April 30, 2019, 5pm CST
Awards Announced	Week of May 20, 2019
Contracts Executed	Week of June 3, 2019
First Disbursement of Funds	Week of July 1, 2019

EXHIBIT B
INSURANCE REQUIREMENTS

Section 1: The Contractor, during the term of the Contract, shall carry insurance in the following types and amounts:

1.1 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:

- 1.1.1 Blanket Contractual liability coverage for liability assumed under this contract;
- 1.1.2 Products and completed operations coverage;
- 1.1.3 Independent contractors coverage;
- 1.1.4 Personal and Advertising injury coverage;
- 1.1.5 Additional Insured endorsement (Form CG 2010), or equivalent coverage;
- 1.1.6 Waiver of Subrogation endorsement (Form CG 2404), or equivalent coverage; and
- 1.1.7 30-Day Notice of Cancellation endorsement (Form CG 0205), or equivalent coverage.

Section 2: The Contractor shall cause any contractor or subcontractor, constructing improvements to the Premises, from the Date until issuance of the Completion Notice by the City with respect to the Premises, to carry insurance in the following types and amounts:

2.1 Employers Liability and Workers' Compensation Insurance. Minimum policy limits for Employers' Liability shall be \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. Workers' Compensation coverage shall be consistent with statutory benefits described in the Texas Workers' Compensation Act, section 401. Coverage shall apply to the State of Texas. The policy shall contain the following endorsements in favor of the City:

- 2.1.1 Waiver of Subrogation (Form WC 420304), or equivalent coverage; and
- 2.1.2 30-Day Notice of Cancellation (Form WC 420601), or equivalent coverage.

2.2 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:

- 2.2.1 Blanket Contractual liability coverage for liability assumed under this contract;
- 2.2.2 Products and completed operations coverage;
- 2.2.3 Independent contractors coverage;
- 2.2.4 Personal and Advertising injury coverage;
- 2.2.5 Additional Insured endorsement (Form CG 2010), or equivalent coverage;
- 2.2.6 Waiver of Subrogation endorsement (Form CG 240-1), or equivalent coverage; and

2.2.7 30-Day Notice of Cancellation endorsement (form CG 0205), or equivalent coverage.

2.3 **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:

2.3.1 Additional Insured endorsement (Form CA 2048), or equivalent coverage;

2.3.2 Waiver of Subrogation endorsement (Form CA 0444), or equivalent coverage; and

2.3.3 30-Day Notice of Cancellation endorsement (Form CA 0244), or equivalent coverage.

2.4 **Builders' Risk Insurance** on an all risk physical loss form in the amount of the maximum Contract amount for all improvements made to the Premises. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a Completion Notice is issued with respect to the improvements. The City shall be a mortgagee/loss payee on the policy. If off-site storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.

Section 3: If insurance policies are written for less than the amounts specified in these Insurance Requirements, the Contractor and subcontractors shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

Section 4: The Contractor and subcontractors shall provide the City at least 30 calendar days written notice of erosion of the aggregate limit below the minimum required combined single limit of coverage.

Section 5: The Contractor and subcontractors shall not acquire any property or commence work under the Contract until it has obtained all required insurance and until the City has reviewed and approved such insurance coverage.

Section 6: Insurance coverage must: (a) be written by companies licensed to do business in the State of Texas at the time the policy is issued, and (b) with an A.M. Best rating of B+VII or better. All endorsements, naming the City as additional insured, waivers, notices of cancellation, notices of non-renewal or any other endorsements as well as the Certificate of Insurance shall:

6.1 Name the City at the following notice address:

City of Austin, Texas
Economic Development Department
Attn: Kim McCarson
P.O. Box 1088
Austin, Texas 78767-1088

6.2 Obligate the insurance company to notify in writing the City at its notice address of any non-renewal, cancellation or material change to the policy, at least 30 calendar days before the change or cancellation.

Section 7: The "other" insurance clause shall not apply to the City where the City is an additional insured shown on the policy. It is intended that the policies required in the Contract,

covering both the City and the Contractor or subcontractors, shall be considered primary coverage, as applicable,

Section 8: The Contractor and subcontractors shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or the twenty-four month period following completion, in the case of a claims-made policy.

Section 9: The City reserves the right to review this Insurance Requirement during the effective period of the Contract and to make reasonable adjustments to insurance coverages, and their limits, when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company, as well as that of the Contractor.

Section 10: The City shall be entitled, upon request, and without expense to City, to receive copies of the requisite insurance policies and all endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions. (Except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies).

Section 11: Actual losses, deductibles and self-insured retentions stated in policies, if any, which are not covered by insurance as required by this Insurance Requirement, are not allowable costs under the Contract.

Exhibit C
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 18th day of September, 2019

CONTRACTOR	<u>Salvage Vanguard Theater</u>
Authorized Signature	<u>Kate Taylor</u>
Title	<u>Executive Artistic Director</u>

EXHIBIT D

**City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Salvage Vanguard Theater

Signature of Officer or Authorized Representative: Kate Taylor

Date: 9/19/2019

Printed Name: Kate Taylor

Title Executive Artistic Director

Exhibit E

Work Plan

ROGGE SALVAGE VANGUARD THEATER BUDGET**REVENUE**

Individual Gifts	\$25,000
City of Austin	\$50,000
TOTAL REVENUE	\$75,000

EXPENSES**Materials:**

Risers	\$30,000	
Chairs	\$10,000	
Grid	\$5,000	
Light Board	\$500	
Upgrade Light Instruments	\$4,540	
Sound board/ system upgrade	\$4,000	
Speakers	\$1,600	
Black paint /supplies	\$600	
Masking/ curtains	\$5,000	
Misc.	\$2,000	(desks, costume racks, mirrors)
Total Materials	\$63,240	

Labor:

7 builders	\$3,840	(Install grid, risers, and curtains at the rate of \$15 an hour for 32 hours)
8 painters	\$1,920	(at \$15 an hour for 16 hours)
Electrician	\$3,000	
Renovation Manager	\$3,000	
Total Labor	\$11,760	

TOTAL EXPENSES	\$75,000
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Rogge Ranch and Salvage Vanguard Theater: Project Time Line

September 2019

- Finalize architectural plans for theater.
- Secure committed donations of \$25K.
- Publicly announce venue and fundraising campaign.
- Present theater plans at Pecan Springs Neighborhood Association Meeting.

December 2019

- Raise \$50K from individual support.

January 2020

- Earliest date to begin-buildout.
- Survey at Pecan Springs Neighborhood Association Meeting to gather data on community investment, programming interests and neighborhood preservation & enrichment prerogatives.
- Assess build-out timeline and begin booking venue reservations.

February 2020

- Call for visual artists for gallery opening

September 2020

- SVT moves into theater...

Salvage Vanguard Theater will begin renovating the interior of the 2,049 sqft space at Rogge Ranch immediately upon move-in. Rogge Ranch is solely responsible for the build out and construction of the Warehouse space. Salvage Vanguard Theater is only responsible for the Renovations of the 2,049 sqft space, transforming it into a theater.

See LEASE attachment for details.

- Neighborhood Open House / Gallery Art Exhibit showcase / Theater tour

October 2020

Renters & SVT begin producing work for the public!